

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7720 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No.

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KARIM @ KALIYO ALIBHAI SANDHI

Versus

COMMISSIONER OF POLICE

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Appearance:

MS SUBHADRA G PATEL for Petitioner

MR.NEEGAM SHUKLA, AGP for Respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 02/11/96

ORAL JUDGEMENT

This Special Civil Application is directed against the petitioner's detention order dated 26.3.1996 passed by the Police Commissioner, Rajkot City whereby the petitioner has been detained under the provisions of Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was executed on 26.3.1996 itself and since then the petitioner is under detention lodged at

Central Prison, Ahmedabad.

This Special Civil Application was filed in this Court on 10.10.1996 and on 14.10.1996 Rule returnable by 22.10.1996 was issued but so far neither any reply has been filed nor any affidavit of the Detaining Authority has been filed. The grounds of detention enclosed with the detention order show that two criminal cases for the offences under IPC Chapters 16 and 17 were registered against the petitioner. One case is pending for trial and in another case investigation was going on at the time when the order was passed. Besides this the Detaining Authority has taken into consideration the statements made by certain witnesses against the petitioner for his criminal and antisocial activities and the allegation that the petitioner has been beating innocent citizens and traders and is also grabbing gold items from them and beating the witnesses. The petitioner is a headstrong person engaged in all sort of antisocial activities. The witnesses had also requested that their identity be kept secret and accordingly the provisions of section 9(2) of PASA Act were invoked.

The learned counsel for the petitioner has challenged the detention order on more than one grounds but stress was laid on the point that the allegations and the materials on the basis of which the detention order has been passed against the petitioner do not make out any case of breach of public order and at the most it can be said to be a case of the breach of law and order. Strong reliance has been placed on the Supreme Court decision in the case of M.J.Shaikh Vs. M.M.Mehta, reported in 1995(2) GLR Pg.1268.

I find that the contention of the learned counsel for the petitioner is fully covered by the Mustakmiya's case (Supra). The detention order cannot be said to be based on the grounds germane to the breach of the public order. It is at the most a case of the breach of law and order only. Accordingly the detention order cannot be sustained in the eye of law.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 26.3.1996 passed by the Police Commissioner, Rajkot City is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith if not required in any other case. Rule is made absolute.

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